

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2001-101-T - ORDER NO. 2001-977  
OCTOBER 1, 2001

IN RE: Application of Kenneth M. Ellis D/B/A A&T )  
Specialty Movers, 771 Long Point Road, Mt. ) ORDER GRANTING  
Pleasant, South Carolina 29464, for a Class E ) CLASS E CERTIFICATE  
Certificate of Public Convenience and )  
Necessity to Transport Commodities. )

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Kenneth M. Ellis D/B/A A&T Specialty Movers (hereafter referred to as "A&T Specialty Movers" or the "Applicant"). By its Application, A&T Specialty Movers requests a Class E Certificate of Public Convenience and Necessity to transport household goods. Specifically, A & T Specialty Movers seeks authority to transport household goods as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):  
Between points and places in Berkeley, Charleston, and  
Dorchester counties.

The Commission's Executive Director instructed A&T Specialty Movers to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing provided details of the Application and of the requested authority and provided information for public participation in the proceedings concerning the Application. Petitions to Intervene were received from Carey Moving

and Storage, Inc., Carey Moving and Storage of Greenville, Inc., Arrow Moving and Storage, Inc., Dale J. Cook Moving and Storage, Inc., and Kohler Movers, Inc.

A hearing on A & T Specialty Mover's Application was held on August 22, 2001, at 2:30 P.M. in the hearing room at the offices of the Commission. The Honorable William T. Saunders, Chairman, presided at the hearing. Kenneth M. Ellis appeared pro se on behalf of the Applicant. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff. The Commission Staff did not present any witnesses. Albert Kohler of Kohler Movers, Inc. appeared as an intervenor at the hearing.

#### **APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2000) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.  
...

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2000) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and

charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2000) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulation; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2000) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(5) (Supp. 2000) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2000) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

9. 26 S.C. Code Regs 103-133 (Supp. 2000) is entitled "Proof Required to Justify Approving an Application" and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

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<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2000) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

**EVIDENCE OR RECORD**

Although the initial Application indicated A & T Specialty Movers sought to move household goods between points and places in Berkeley, Charleston, and Dorchester counties to points and places in South Carolina, the record reveals the authority sought was downward amended to between points and places in Charleston, Berkeley, and Dorchester counties. Ellis has had authority from the Georgia Public Service Commission to move household goods in Georgia for the past two years. Ellis' Georgia moving company handled commercial and household goods in Georgia. Additionally, Ellis employed two employees in his moving business in Georgia.

The testimony reveals that Ellis has twelve years experience in the moving business. He worked for Atlanta Peach Movers in Georgia for ten years and thereafter he opened his own business. While employed with Atlanta Peach Movers, Ellis drove, packed, loaded and performed several other moving-related duties. Ellis made approximately two hundred moves last year in Georgia and he has completed between eighty to ninety moves this year. While operating in Georgia, Ellis operated his business out of his home. He also owned one truck and he leased one. He is a member of the Georgia's Movers Association. After receiving certification from the South Carolina Public Service Commission, Ellis does not intend to continue operating his moving business in Georgia. His full time employees who worked with him in Atlanta will be employed with the new business in South Carolina.

Ellis testified that family members and people in the community have asked him to locate his moving business in Mt. Pleasant. According to Ellis, Mt. Pleasant is one of

the fastest growing cities in South Carolina. The testimony reveals that A&T Specialty Movers has already placed an advertisement in the BellSouth Yellow Pages regarding the Company's moving service. Additionally, Ellis testified he has received several telephone calls regarding the advertisement in the Yellow Pages.

Ellis also testified that the Company will cooperate with Transport Police to obtain a safety rating on its equipment. Additionally, the testimony reveals that there are no outstanding judgments against A&T Specialty Movers. Moreover, Ellis is familiar with all statutes and regulations including safety operations in South Carolina. Finally, Ellis agreed to operate in compliance with all applicable South Carolina statutes and regulations.

Regarding the equipment that A&T Specialty Movers will utilize to move household goods in South Carolina, Ellis testified that the Company will use two twenty-six foot moving vans. The Company already has a 1994 twenty-six foot International moving van and Ellis testified that he will probably purchase another van. Additionally, A&T Specialty Movers already owns dollies, blankets, bubbles, tape and other items needed to move household furniture. The record reveals further that A&T Specialty Movers will use some of the same equipment it used in Georgia to move household goods in South Carolina. Although the Application contained an insurance quote for the Company's moving services, Ellis testified that he realized A&T Specialty Movers will have to provide proof of insurance to the Commission prior to the Company operating in South Carolina. After being granted a Certificate of Public Convenience and Necessity,

Ellis testified that he is willing to provide the services in the counties where he seeks certification.

According to the record, Ellis testified his financial status has not changed; however, the status of his savings has improved. He will use the tariff of the South Carolina Tariff Bureau. Ellis does not intend to target a particular type of residential customer. His current address is 771 Long Point Road, Mt. Pleasant, SC.

### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. According to the Application and the testimony presented, A&T Specialty Movers desires to provide moving services of household goods between points and places in Berkeley, Charleston, and Dorchester counties. We find that based upon the evidence presented at the hearing, the Applicant should be granted authority to provide moving services of household goods between points and places in Berkeley, Charleston, and Dorchester counties.

2. The Applicant, A&T Specialty Movers, is fit, willing, and able to provide and properly perform the services which it seeks to provide in Berkeley, Charleston, and Dorchester counties. This finding of fact is based upon the testimony of Kenneth Ellis and the Application. "Fitness" was demonstrated by Kenneth Ellis testifying (1) that the Applicant is aware of the requirement for a safety rating and will undergo the requisite safety inspection, (2) that there are no outstanding judgments pending against the Applicant, and (3) that the Applicant will operate in compliance with all statutes and



regulations pertaining to for-hire motor carrier operations. Further, the application contains (1) a certification that the Applicant is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against the Applicant. "Able" was demonstrated by the testimony of Kenneth Ellis who testified that the Applicant has operated as a household goods moving carrier for the last two years in Georgia. Additionally, Ellis testified that A&T Specialty Movers owns one 1994 twenty-six foot International moving van and the Company owns moving equipment such as dollies, blankets, bubbles, tape and other items needed to move household goods. Further, according to the Financial Statement Exhibit of the Applicant, A&T Specialty Movers possesses the financial wherewithal necessary to provide household good moving services between points and places in Berkeley, Charleston, and Dorchester counties. Moreover, according to the Application, A&T Specialty Movers is aware of the Commission's insurance requirements and provided assurance that A&T Specialty Movers would obtain the requisite insurance coverage. "Willingness" was demonstrated by the filing of the Application and the testimony of Kenneth Ellis indicating the Applicant's desire to undertake this business venture.

3. The public convenience and necessity would be served by A&T Specialty Movers receiving authority to provide household goods services between points and places in Berkeley, Charleston, and Dorchester counties. This finding of fact is based upon the testimony of Kenneth Ellis. As a current resident of Charleston county (Ellis resides in Mt. Pleasant, South Carolina), Ellis testified that there is a need for a moving business in the area where he currently resides. The testimony reveals that family

members and people in Ellis' community have asked him to locate his moving business in Mt. Pleasant. Additionally, the testimony also reveals that Mt. Pleasant is one of the fastest growing cities in South Carolina. Moreover, Ellis testified that he has already placed an advertisement in the BellSouth Yellow Pages regarding the Company's moving service. According to Ellis, he has received several telephone calls regarding this advertisement in the Yellow Pages.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that A&T Specialty Movers has demonstrated through the Application and the testimony presented that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Ann. Regs. 103-133 (Supp. 2000).
2. The Commission concludes that A&T Specialty Movers has sufficiently demonstrated through its presentation that the public convenience and necessity between points and places in Berkeley, Charleston, and Dorchester counties requires the services proposed by A&T Specialty Movers.
3. Based on the conclusions above, that A&T Specialty Movers has demonstrated that it meets the requirements of fit, willing, and able and that A&T Specialty Movers has demonstrated that the public convenience and necessity require its services in Berkeley, Charleston, and Dorchester counties, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted to A&T Specialty Movers with the authority to provide for the movement of household goods

between points and places in Berkeley, Dorchester, and Charleston counties, South Carolina. This grant of authority is contingent upon A&T Specialty Movers complying with all Commission regulations, and this grant of authority is not effective until such time as A&T Specialty Movers comes into compliance with the Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The Applicant, Kenneth M. Ellis d/b/a A&T Specialty Movers should be granted a Class E Certificate of Public Convenience and Necessity authorizing A&T Specialty Movers to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):  
Between points and places in Berkeley, Charleston, and  
Dorchester Counties, South Carolina.

2. A&T Specialty Movers shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to A&T Specialty Movers authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)